

State of California
AIR RESOURCES BOARD

Third Notice of Public Availability of Modified Text

PUBLIC MEETING TO CONSIDER REGULATIONS
FOR AN ENHANCED FLEET MODERNIZATION PROGRAM (CAR SCRAP)

Public Hearing Date: June 26, 2009
First Public Availability Dates: December 9, 2009 – December 28, 2009
Second Public Availability Dates: March 18, 2010 – April 2, 2010
Third Public Availability Date: July 12, 2010
Deadline for Public Comment: July 27, 2010

At its June 26, 2009, public hearing, the Air Resources Board (ARB or Board) approved the adoption of California Code of Regulations (CCR), title 13, chapter 13, article 2, sections 2620 through 2630. The purpose of this regulation is to improve California air quality through the voluntary early retirement of vehicles as directed by the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 (Assembly Bill 118, Statutes of 2007, Chapter 750; Health and Safety Code sections 44125-44126).

At the hearing, the Board adopted Resolution 09-44, in which it approved the proposed regulation with amendments. Resolution 09-44 directed the Executive Officer to adopt the proposed regulation, along with other conforming modifications and technical amendments as may be appropriate, and to make such modifications available for a supplemental comment period of at least 15 days. A second 15-day notice further modified the regulatory text to provide consistency with changes to the State's existing retirement program.

This third Public Notice is in response to comments made by the Office of Administrative Law (OAL) after a review of the regulatory package. OAL stated that two provisions of the proposed regulations do not meet the consistency standard of Government Code section 11349.1, subdivision (a). Consequently, OAL disapproved the adoption of the regulatory proposal. OAL's rationale for the disapproval is discussed below, along with the modifications that staff is proposing to address OAL's concerns.

The attachment to this notice contains the text of California Code of Regulations, title 13, sections 2620 through 2630, which shows the proposed 15-day modifications to the amended regulatory language. The modifications provided in the first Notice of Public Availability of Modified Text (December 9, 2009) are shown in underline to indicate additions to the original proposal and ~~strikeout~~ to indicate deletions. The modifications proposed in the Second Notice of Public Availability of Modified Text are shown in double underline to indicate additions to the original proposal and ~~double strikeout~~ to indicate deletions. The modifications proposed in this Third Notice of Public Availability

of Modified Text are shown in **double underline bold** to indicate additions to the original proposal and ~~**double underline bold**~~ to indicate deletions. The rationale for the modifications proposed in the Third Notice is set forth below.

I. Proposed Modifications Being Made Available for Comment

A. Change in Program Eligibility.

The authorizing statute for the EFMP states in part that: “The program is available for high polluting passenger vehicles and light-duty and medium-duty trucks that have been continuously registered in California for two years prior to acceptance into the program or otherwise proven to have been driven primarily in California for the last two years and not have been registered in any other state or country in the last two years (Health and Safety Code Section 44125 (b)(3)).” The originally proposed text contained language to support the eligibility of vehicles without continuous registration.

However, at the June 26, 2009 meeting to consider the proposed regulation, the Board directed that in addition to demonstrating use primarily in California for the past two years, a vehicle without continuous registration must also be registered at the time of acceptance in order to be eligible. Thus, unregistered vehicles would be required to register immediately before acceptance into the program. This requirement was intended to comply with the legislative direction to accept vehicles that did not have continuous registration without rewarding owners who were operating unregistered vehicles in violation of the law. OAL believes that this amendment alters the effect of the program contemplated by the Legislature. To address this comment, the program eligibility requirements in section 2624(b)(2) have been modified to remove the requirement that unregistered vehicles be registered at the time of acceptance.

B. Change in Voucher Availability.

Proposed section 2627 establishes the basic provisions for administration of the voucher program. The originally proposed language of section 2627 specified that the vouchers initially be offered in the San Joaquin Valley and South Coast air basins with inclusion of other areas as determined by the Board. OAL determined that discretion for expanding the program to other areas must be in accordance with the Administrative Procedure Act, including an opportunity for public participation in the rulemaking and review by OAL. To address OAL’s finding, the language for the Board to expand the program has been removed. While the Board will continue to evaluate the benefits of expanding the voucher program to other areas, removing the language clarifies that the process will be in accordance with the Administrative Procedure Act.

Comments and Subsequent Action

The regulatory documents for this rulemaking, including Resolution 09-44, are available at: <http://www.arb.ca.gov/regact/2009/carscrap09/carscrap09.htm>.

In accordance with section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt new sections 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, and 2630, title 13, California Code of Regulations, after making the modified text available to the public for a period of at least 15 days. The Board further directed that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments may be submitted by postal mail or electronic mail as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Govt. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo (por decir, sistema Braille, o en impresión grande) otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachment

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.